defense mechanism, that preserves dignity and creates an atmosphere of trust and mutual respect.

The key inference here is respect towards the parties involved and the role that the State plays when establishing the rules that must be followed. I would say that the same values that are presented there should encourage employers in their interaction with their employees. I can proudly say that the President elected has taken matters in his own hands to set an example, making it mandatory for all ministers to sign a Code of Ethics and Conduct.[1]

Further analysis must be made in order to have a more accurate data in this regard, nonetheless experience states that whether a company acts in an ethical manner or not is not a significant factor at the moment for the average Dominican's willingness to work for an employer. Jobseekers have other priorities, such as the need to work and provide for their families. Hopefully, this is about to change with the new measures being held at all levels. There is a considerable percentage of people who aspire to gain experience from a leading provider of governance, ethics, and compliance management and have conducted themselves in such a way throughout their professional life.

Regardless of the challenges that we face, great efforts have been made by both public and private entities to move towards a greater ethical "well being." And despite the culture imbalance of roles and duties, privileges, and responsibilities latent in what is socially approved, (described in Robert Lowie's book *Culture and Ethnology*[2]) it is my opinion that our ethical future is bright. ❑

> *The most important aspect of conflict resolution, aside from protecting the parties' rights, is respecting dignity and valuing the individual in the process of aiming for a preventive method, as opposed to a defense mechanism, that preserves dignity and creates an atmosphere of trust and mutual respect.*

Endnotes

1 "Presidente y la Vice firman Còdigo `Etica," *Listin Diario*, August 23, 2012, http://bit.ly/KabMUT

2 Robert H. Lowie: *Extreme Culture Relativism*. Basic Books Inc., 1967.

History of the Integrity, Ethics and Compliance Movement: A cautionary tale for CEOs and corporate directors

by Michael Josephson, JD

Although the concept of imposing responsibility on companies to establish internal controls to prevent corporate wrongdoing was introduced in 1977 through the Foreign Corrupt Practices Act (prompted by more than 400 U.S. companies admitting to paying bribes or making other illegal or questionable payments to foreign governments),[1] American business did not make any significant efforts to establish systematic controls until the collective impact of five brutal years of unremitting scandal (1985–1990).

The scandals started with a variety of Defense Industry-Pentagon misconduct and mismanagement, resulting in the appointment of a Blue Ribbon Presidential Commission to study the problem. The major impetus for this was the "spare parts scandal" that erupted in 1985. Congress and the public were outraged to discover that the Pentagon was paying ridiculous prices for "spare parts," including a $7,622 coffee brewer, a $435 hammer, and the infamous $600 toilet seat. According to a Government Accountability Office (GAO) report, the Department of Defense spent nearly $37 billion purchasing spare parts at highly inflated prices. What is significant is that this was not a compliance issue; no one was convicted of a crime. Nevertheless, both the price gouging by the sellers and the irresponsible, unaccountable overpaying by Department of Defense were widely regarded as unethical.[2]

The Blue Ribbon Commission echoed and expanded on the 1977 FCPA provisions demanding internal controls to prevent illegal and unethical conduct. They also recommended that defense contractors voluntarily improve the acquisition process through greater self-governance:

> "To assure that their houses are in order, defense contractors must promulgate and vigilantly enforce **codes of ethics** that address the unique problems and procedures incident to defense procurement. They must also develop and implement internal controls to monitor these codes of ethics and sensitive aspects of contract compliance" (emphasis added).[3]

Within months of the recommendations, Jack Welch, CEO of General Electric (a company involved in several bribery and misconduct scandals), along with the CEOs and senior officials from 17 other defense contractors, met to form a voluntary organization called the Defense Industry Initiative on Business Ethics and Conduct (DII). The purpose of the DII was to create a "heightened standard of **ethical conduct**…in the defense industry," promote self-policing to ensure compliance with **ethical standards even when they exceed legal requirements**," and create a forum to "share best practices in **dealing with ethics and business conduct**" (emphasis added).[4] It is crystal clear that at least the rhetoric was about ethics, a concept that clearly embraces but goes well beyond compliance.

By July 1986, 32 major defense contractors had pledged to adopt these six principles, including promulgation and adherence to a written code of conduct, employee training, encouragement of employee accountability, and procedures for voluntary disclosure to the Government.[5]

America's disgust with the ethics of business was further heightened by the Savings and Loan Crisis just a few years later. The crisis, a preview of the massive mortgage meltdown 20 years later, started not with criminality, but reckless lending practices resulting in major losses, many of which were covered up by frauds. About 750 S&Ls collapsed, resulting in a General Accounting Office estimated total cost of $370 billion, including $341 billion of taxpayer money. The Savings and Loan Crisis created the greatest banking collapse since the Great Depression of 1929. By 1989, over half of the Savings and Loans had failed, and the federally funded Federal Savings and Loan Insurance Corporation (FSLIC) went bankrupt. Nearly 1,000 people were charged with crimes (often lower level employees); of those, 580 were convicted, and 451 were sentenced to prison with an average sentence under two years.

Michael Josephson

The 1980s closed with more financial shenanigans by a large investment banking firm, Drexel Burnham, led by the "junk bond king" Michael Milken. After months of claiming innocence, Milken pleaded guilty to six technical felonies and agreed to pay $600 million in fines and restitution, by far the biggest fraud case in the history of the securities industry. Everyone was shocked when Milken was sentenced to prison for ten years, but not so shocked when the sentence was reduced to two years. In the end, he served 22 months.

This is the context in which the Federal Sentencing Guidelines for Organizations (FSGO) were adopted in 1991. Though the sentencing guidelines do not require companies to establish effective compliance and ethics programs to **prevent, detect, and self-report** illegal and unethical conduct, they do offer hefty incentives to do so in the form of great leniency (reducing penalties by as much as 90 percent) if a company is convicted of a federal crime. The Guidelines also specified core elements (the "Seven Steps") of a program that would qualify.

In order to meet the requirements to be eligible for reduced sentences, many companies, especially those in highly regulated industries, began creating multi-faceted programs to include the seven elements specified by the guidelines. This including revising or drafting new codes of conduct, policies and procedures, training programs, risk assessments, and hotlines. To meet the need to design, administer, and oversee the development and implementation of this new program, a new job (later to be treated as a profession) was born—the chief compliance officer.

Almost immediately, about 30 ethics officers, mostly from the defense industry, formed the Ethics Officers Association (EOA). At the first meeting, Tom Phillips, chairman emeritus from Raytheon, referred to the moment as the beginning of "a new profession in American industry" and expressed his belief that an ethics officer position was essential to the ethical health of a company. In 1992, just one year after the FSGO was introduced, the organization had 22 sponsoring partners. In 2005, the organization added the word *compliance* to their name and became the Ethics and Compliance Organization (ECOA).

In 2004, a second nonprofit association serving the ethics/compliance profession, the Society of Corporate Compliance and Ethics (SCCE)® was formed. SCCE (publishers of this magazine) have about 4,000 members worldwide and have added a new dimension of professional status to the ethics/compliance field by creating a certification program. More than 6,000 individuals have been actively certified through the Compliance Certification Board (CCB)®.

So, Tom Phillips' prediction came true. Today there is a very large and growing army of professionals who go by different names—Ethics Officer, Compliance Officer, Ethics and Compliance Officer—all working toward the same goal. As the position has grown in stature and responsibility, most organizations have dedicated a whole department of folks committed to keeping their organization out of trouble, and their leader is called the "Chief."

Despite the rhetoric about the importance of ethics and integrity, and a clear intent to induce companies to establish comprehensive internal controls and educational programs, and the expenditure of millions of dollars by companies seeking to create qualifying compliance and ethics programs, few companies actually developed programs that went beyond the compliance dimension of the challenge. What's more, many of the programs were more show than go. They had all the elements prescribed by the FSGO, but had little chance of affecting the root causes of unethical and illegal conduct.

The inadequacy of the first generation of corporate compliance and ethics programs became evident as the nation

> *In essence, a really effective program must embed ethics (not just compliance) into the DNA of the organization.*

was rocked by a parade of multi-billion dollar accounting frauds and private looting at Enron,[6] WorldCom, Adelphia, Health South, Global Crossing, and Tyco in 2000–2002. In 2002, Congress responded to the evident hole in the corporate moral ozone by passing the Sarbanes-Oxley Act, imposing very rigorous internal control requirements on corporations. In 2004,[7] the Uniform Sentencing Commission responded by augmenting the FSGO criteria to explicitly insist on more than superficial "check-the-box" programs that look good on paper but don't truly inspire ethical commitment. To underline this point, the new guidelines made it clear that a program will not qualify as effective unless it is capable of creating an **ethical culture**. In essence, a really effective program must embed ethics (not just compliance) into the DNA of the organization.

Unfortunately, even these efforts didn't prevent the rampant irresponsibility of hundreds of financial institutions in the mortgage industry that led to massive bankruptcies and bailouts. These scandals involved Wall Street's most prestigious investment banks and brokerages (Lehman Brothers, Bear Stearns, Merrill Lynch, etc.), one of the nation's largest insurance companies (AIG), and two iconic government sponsored entities (Freddie Mac and Fannie Mae). Between June 2007 and November 2008, Americans lost more than a quarter of their net worth.[8]

This historical review should make it clear that Boards of Directors that have allowed their companies to confine their concerns to compliance are vulnerable under the Caremark doctrine[9] because these programs fail to achieve the goals and demands of the government: that corporations establish robust, integrated programs that promote ethics and integrity as well as prevent and detect illegal conduct. ❑

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New publisher for *Ethikos*

Dear Ethikos Subscribers:

On January 1, 2014, *Ethikos* began a new era when the Society of Corporate Compliance and Ethics (SCCE)® became its new publisher. SCCE is a non-profit association of approximately 4,000 compliance and ethics professionals from more than 55 countries. It is the sister association of the Health Care Compliance Association (HCCA)®, which has approximately 9,000 members of its own.

Adam Turteltaub

The move of *Ethikos* to SCCE is a very positive one for the publication and subscribers. SCCE is already deeply involved with the ethics and compliance community and is the publisher of *Compliance & Ethics Professional*, a magazine exclusive for its members, and *eCorporate Compliance News*, a weekly email newsletter.

In addition, during 2014 SCCE will offer thirty ethics and compliance conferences, six of which will take place outside of the US: Brussels, London, São Paulo, Shanghai, Dubai, and Vancouver. This deep commitment to serving the community gives SCCE unique insight into the needs of ethics and compliance professionals, insights that will be brought to the pages of *Ethikos*.

To learn more about SCCE visit www.corporatecompliance.org. We look forward to serving *Ethikos* readers and furthering the cause of business ethics.

Sincerely,

Adam Turteltaub
Vice President of Membership Development
Society of Corporate Compliance and Ethics

History of the Integrity, Ethics and Compliance Movement*...continued from page 15*

Endnotes

1 The headline in this group of scandals was provided by Congressional testimony by a Lockheed executive in 1976 admitting his company paid $22 million in bribes to Japanese government officials in an effort to sell its planes to Japan. This testimony was especially embarrassing since the U.S. Government had recently provided Lockheed with a $250 million emergency loan guarantee.

2 As a result of this scandal Congress imposed an unprecedented one year freeze on the Department of Defense Budget.

3 See the full report at http://1.usa.gov/1ekAyJr

4 *Origins and Development of the Defense Industry Initiative, in 2000 DEF. INDUS. INITIATIVE ANN. REP. 4-10* available at http://bit.ly/1e2gfEu

5 The DII Principles: 1) Have and adhere to written Codes of Conduct; 2) Train employees in those Codes; 3) Encourage internal reporting of violations of the Code, within an atmosphere free of fear of retribution; 4) Practice self-governance through the implementation of systems to monitor compliance with federal procurement laws and the adoption of procedures for voluntary disclosure of violations to the appropriate authorities; 5) Share with other firms their best practices in implementing the principles, and participate annually in "Best Practices Forums;" and 6) Be accountable to the public.

7 Less dramatic, but significant additional guidance stressing ethical culture was added in a 2010 amendment to the FSGO.

8 The virus of irresponsible mortgage lending and the buying and selling mortgagees and derivative products turned into a financial pandemic that undermined the world economy, but in the U.S. alone the stock value of major financial institutions dropped so drastically that retirement funds held by millions of Americans dropped by more than 20% from 2006-2008 (losing $2.3 *trillion*). Housing prices dropped by 20% from their 2006 peak and home equity values dropped by a staggering $4.2 trillion. "The Great Crash, 2008 by Roger C. Altman" in Foreign Affairs.

9 See The Duty to Monitor under Delaware Law: from Caremark to Citigroup, by Eric J. Pan, Director Notes, The Conference Board (February 2010), http://bit.ly/1e2fOd8 (restricted content, requires subscription).